IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.503 OF 2005

Mr.A.Y.Sakhare i/b Mr.Rajesh S.Datar for the Applicant.

Ms.S.I.Shah i/b M/s.S.I.Shah & Co. for the Respondent.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 17TH AUGUST,2005

P.C.:

1. Heard the learned Counsel appearing for the Appellant and the Respondent. Perused the order dated 21st July, 2005 passed by the Division Bench in Writ Petition No.996 of 2005. The Respondent does not claim that it is entitled to retain the property which admittedly belongs to the Appellant, because it has no lien or any charge on the property. It appears from the order of the Division Bench that the

Appellant was not permitted to remove the property because some amount was payable by the Appellant to the labours and the matter is presently pending before the Industrial Court. Admitted position before me is no court has till date made any order preventing the Appellant from removing their machinery and equipment. The Division Bench has granted liberty to the parties to move the Industrial Court for appropriate orders. It was submitted on behalf of the Respondent that because the Division Bench has permitted the parties to move the Industrial Court for appropriate orders, the Appellant should move the Industrial Court. In my opinion, that is not correct interpretation of the order of the Division Bench. Had there been the order made by the Industrial Court preventing the Appellant from removing the machinery, there would have been justification in saying that the Appellant should approach the Industrial Court for permission to remove the machinery. Unless the

Industrial Court has made any order preventing removal of machinery, there is no question of Industrial Court granting permission for removal of the machinery. The other party to the dispute before the Industrial Court is labours. In case they seek an order for protection of their interest in relation to removal of the machinery, it is for them to move the Industrial Court and secure appropriate orders. I have been informed that the Industrial Court to this date has not made any order restraining the Appellant from removing the machinery. The Respondent also cannot claim any charge or lien on the machinery and equipment. In view of the liberty granted by the Division Bench and in view of the fact that the equipment is lying with the Respondent, in my opinion, following order would meet the ends of justice.

O R D E R

(i) The Respondent/Central warehousing Corporation shall permit

the Appellant to remove the machinery and equipment which are subject matter of this Application, after expiry of period of two weeks from today.

(ii) In case the Respondent receives any order from any competent court prohibiting the Appellant from removing the machinery, the Respondent shall abide by that order. But in case no such order is received within the aforesaid time, the Respondent shall permit the removal of machinery and equipment.

(iii) Application disposed of.

...